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Attorneys for Plaintiffs

[Additional counsel on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAX FEDERMAN, on Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

vs.

ROCKET FUEL INC., E. RANDOLPH
WOOTTON III, MONTE ZWEBEN,
RICHARD A. FRANKEL, SUSAN L.
BOSTROM, RONALD E. F. CODD,
WILLIAM W. ERICSON, CLARK M.
KOKICH, and JOHN J. LEWIS,

Defendants.

Case No.: 3:17-cv-04651-SK

**STIPULATION TO DISMISS ACTION
AS MOOT AND RETAINING
JURISDICTION TO DETERMINE
PLAINTIFF'S COUNSEL'S
POTENTIAL JOINT APPLICATION
FOR FEES AND EXPENSES**

Judge: Magistrate Sallie Kim
Courtroom: A – 15th Floor

1 **WHEREAS**, on August 7, 2017, Plaintiff Louis Scarantino filed a putative Class Action
2 Complaint (the “Complaint”) in the captioned action (the “Action”) alleging violations of the
3 Securities Exchange Act of 1934 (the “Exchange Act”);

4 **WHEREAS**, Plaintiff alleged that the Defendants violated Section 14(d) of the
5 Exchange Act and Rule 14d-9 promulgated thereunder by causing an allegedly materially
6 incomplete and misleading Recommendation Statement on Schedule 14D-9 (the
7 “Recommendation Statement”) filed with the Securities and Exchange Commission (the “SEC”) on August 2, 2017, which recommended that Rocket Fuel Inc. (“Rocket Fuel”) stockholders
8 tender their shares in favor of approving a transaction between Rocket Fuel and Sizmek Inc. (the
9 “Tender Offer”);

10 **WHEREAS**, Plaintiff further alleged that Defendants violated Section 14(e) of the
11 Exchange Act by issuing the Recommendation Statement in which they made allegedly false
12 and misleading statements or allegedly omitted material facts;

13 **WHEREAS**, six similarly-styled class actions have been filed in this Court challenging
14 the Tender Offer (together with the Action, the “Related Actions”);

15 **WHEREAS**, subsequent to the filing of the Complaint, counsel for the parties engaged
16 in arm’s-length negotiations in an effort to resolve Plaintiff’s claims;

17 **WHEREAS**, following these negotiations, on August 22, 2017, the parties to the Related
18 Actions entered a Memorandum of Understanding (“MOU”) pursuant to which Rocket Fuel
19 agreed to make certain supplemental disclosures;

20 **WHEREAS**, pursuant to the MOU, on August 23, 2017, Rocket Fuel filed a Schedule
21 14D-9/A with the SEC, which contained certain supplemental disclosures related to the
22 Proposed Transaction (the “Supplemental Disclosures”), which Plaintiff believes addressed and
23 mooted his claims regarding the sufficiency of the disclosures in the Recommendation
24 Statement;

25 **WHEREAS**, Plaintiff asserts that the prosecution of the Related Actions caused Rocket
26 Fuel to file the Supplemental Disclosures and that Plaintiff’s counsel have the right to seek and
27 recover attorneys’ fees and expenses in connection with a claimed common benefit provided to
28

Rocket Fuel's shareholders as a result of the filing of the Supplemental Disclosures, and plaintiffs' counsel in the Related Actions have agreed that if their claim for fees and expenses cannot be resolved through negotiations, a single application for fees and expenses will be jointly made by plaintiffs' counsel and filed in the action captioned *Bushansky, et al. v. Rocket Fuel, Inc. et al.*, Case No. 3:17-cv-04454-JD (the "Fee Application");

WHEREAS, the Tender Offer Closed on September 5, 2017;

WHEREAS, pursuant to the terms of the MOU, Plaintiff's counsel wishes to dismiss the Complaint with prejudice as to Plaintiff and without prejudice as to the unnamed members of the putative class;

WHEREAS, the parties agree and respectfully request that this Court retain jurisdiction over the Action for the sole purpose of considering any Fee Application in the event the parties are unable to reach an agreement concerning the amount of any attorneys' fees and expenses to be paid to counsel for plaintiffs in the Actions and such an application becomes necessary;

WHEREAS, for the avoidance of doubt, no compensation in any form has passed directly or indirectly to Plaintiff or his attorneys, and no promise, understanding, or agreement to give any such compensation has been made; nor have the parties had any discussions concerning the amount of any attorneys' fees and expenses;

WHEREAS, Defendants have denied and continue to deny any wrongdoing and contend that no claim asserted in the Actions was ever meritorious;

WHEREAS, Defendants reserve the right to oppose, in whole or in part, any Fee Application; and

WHEREAS, no class has been certified in this action.

NOW, THEREFORE, IT IS STIPULATED AND AGREED by the undersigned parties, through their attorneys and subject to the Court's approval, that:

1. Notice is hereby given that pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Plaintiff voluntarily dismisses this action as moot.
2. The claims pleaded in the Complaint are dismissed with prejudice as to Plaintiff and without prejudice as to the unnamed members of the putative class.

- 1 3. Because the dismissal is with prejudice as to the named Plaintiff only, and not on
2 behalf of a putative class, and no class has been certified, notice of this dismissal
3 is not required.
- 4 4. This Court shall retain jurisdiction over the parties in the Action solely for the
5 purpose of adjudicating the Fee Application, should such an application prove
6 necessary.
- 7 5. The parties to the Related Actions shall meet and confer concerning Plaintiffs'
8 claim for attorneys' fees and expenses. To the extent that the parties are unable
9 to reach an agreement concerning Plaintiffs' claim for attorneys' fees and
10 expense, they will contact the Court to set a stipulated briefing and hearing
11 schedule with respect to the Fee Application. If the parties reach an agreement
12 concerning Plaintiffs' claim for attorneys' fees and expenses, they will notify the
13 Court.

14 DATED: September 13, 2017

GREEN & NOBLIN, P.C.

15 By: /s/ Robert S. Green
16 Robert S. Green

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Attorneys for Plaintiff

21 DATED: September 13, 2017

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27 *Attorneys for Defendants Rocket Fuel Inc.,
28 Randolph Wootton III, Monte Zweben, Richard A.
Frankel, Susan L. Bostrom, Ronald E. F. Codd,
William W. Ericson, Clark M. Kokich, and John J.
Lewis*

1 DATED: September 13, 2017

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2 By: /s/ Matthew Solum
3 Matthew Solum

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5 New York, NY 10022
6 Telephone: (212) 446-4688

7 *Attorneys for Defendants Sizmek inc.,
8 Fuel Acquisition Co., and Vector Capital*

9 **ATTESTATION PURSUANT TO LOCAL RULE 5-1(i)(3)**

10 This certifies, pursuant to Local Rule 5-1(i)(3), that all signatories to this document
11 concur in its content and have authorized this filing.
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